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FEDERAL COMMUNICATIONS COMMISSION  
Washington, D. C. 20554

OFFICE OF  
MANAGING DIRECTOR

January 31, 2012

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Howard A. Topel  
F. Scott Pippin  
Lerman Senter, PLLC  
2000 K Street, Suite 600  
Washington, DC 20006-1809

Re: MTB Bridgeport-NY Licensee LLC  
Station: WSAH, Facility ID No. 70493  
FY 2010 Regulatory Fees  
Fee Control No. RROG-10-00013174  
Amount Due: \$32,275.00

Dear Counsel:

This letter responds to your Petition for Deferment and Waiver of Fiscal Year 2010 Regulatory Fee filed August 31, 2010 (*Petition*) and your letter Request for Waiver or Reduction of 2010 Regulatory Fee Television Stations WSAH, Bridgeport, Connecticut, Facility ID No. 70493 (*Request*),<sup>1</sup> on the grounds of financial hardship. Our records show that MTB Bridgeport-NY Licensee LLC (MTB B-NY) has not paid the \$32,275.00 Fiscal year (FY) 2010 regulatory fee, but, as noted above, it did petition for deferral of payment.

MTB B-NY asserts it "has experienced severe economic hardship over the past year, and expects to continue to experience serious financial difficulties over the next twelve months. [It] lacks sufficient funds to pay the regulatory fee while maintaining WSAH's service to the public."<sup>2</sup> Furthermore, MTB B-NY asserts that during 2009, its parent business entity, Multicultural Television Broadcasting LLC (Multicultural LLC), "experienced a loss from operations of \$111,091" and that it owes "over \$11.6 million in interest payments" that have been postponed.<sup>3</sup> Moreover, MTB B-NY asserts that it may be placed "into a liquidating trust at any time."<sup>4</sup> Thus, MTB B-NY "clearly cannot pay the regulatory fee while continuing to maintain service to the public."<sup>5</sup> In the event the Commission does not grant the waiver, MTB B-NY alternatively asks for "a reduction of the regulatory fees due to the facts that the station is licensed to a community outside the metropolitan area of New York, and it does not provide a usable signal to the major metropolitan areas with the New York DMA."<sup>6</sup> Because the station

<sup>1</sup> Petition for Deferment and Waiver of Fiscal Year 2010 Regulatory Fee, and Request for Waiver or Reduction of 2010 Regulatory Fee Television Station WSAH, Bridgeport, Connecticut Facility ID No. 70493 (filed: Aug. 31, 2010).

<sup>2</sup> *Request* at 1-2.

<sup>3</sup> *Id.* at 3.

<sup>4</sup> *Id.*

<sup>5</sup> *Id.*

<sup>6</sup> *Id.* at 2.

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signal serves only 26.4% of the households in the New York DMA, the fee should be reduced to that percentage of the FY 2010 regulatory fee or \$8,520.60. For the reasons set forth below, we deny the *Request* for a waiver or, in the alternative, a reduction of the fee.

In support of its *Request*, MTB B-NY provided Multicultural Television Broadcasting Group (MTB Group's) combined financial statements,<sup>7</sup> a report of the annual compensation paid to some of MTB B-NY's corporate officials,<sup>8</sup> and the highest paid employees of MTB B-NY,<sup>9</sup> a copy of the letter from the FCC denying MTB B-NY's application to modify its signal,<sup>10</sup> a copy of only five pages of a Forbearance Agreement to First Lien Credit Agreement (Forbearance Agreement),<sup>11</sup> and diagrams representing broadcast signals.<sup>12</sup>

We address first the portion of the *Request* seeking a waiver of the FY 2010 regulatory fee based on financial hardship. In establishing a regulatory fee program, the Commission recognized that in certain instances, payment of a regulatory fee may impose an undue financial hardship upon a licensee. Such fees may be waived, reduced or deferred, but only upon a showing of good cause and a finding that the public interest will be served thereby.<sup>13</sup> The Commission has narrowly interpreted its waiver authority to require a showing of compelling and extraordinary circumstances that outweigh the public interest in recouping the Commission's regulatory costs.<sup>14</sup> Fee relief may be granted based on asserted financial hardship, but only upon a documented showing that payment of the fee will adversely impact the licensee's ability to serve the public.<sup>15</sup> "Mere allegations or documentation of financial loss, standing alone," does not suffice and "it [is] incumbent upon each regulatee to fully document its financial position and show that it lacks sufficient funds to pay the regulatory fee and to maintain its service to the public."<sup>16</sup> In reviewing a showing of financial hardship, the Commission relies on a range of financial documents including a licensee's balance sheet and profit and loss statement (audited, if available), a cash flow projection for the next twelve months (with an explanation of how calculated), a list of their officers and their individual compensation, together with a list of their highest paid employees, other than officers, and the amount of their compensation, or similar information. It is on this information that the Commission considers whether the station lacks sufficient funds to pay the regulatory fee and maintain service to the public.<sup>17</sup> Thus, even if a

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<sup>7</sup> *Id.* Attachment A (Multicultural Television Broadcasting Group, Combined Balance Sheets; Multicultural Television Broadcasting Group, Combined Statements of Income and Retained Earnings; and Multicultural Television Broadcasting Group, Combined Statements of Cash Flows); Attachment B, unidentified Projected Cash Flow Sheet.

<sup>8</sup> *Id.* Attachment C.

<sup>9</sup> *Id.* Attachment D.

<sup>10</sup> *Id.* Attachment E (Letter from Barbara A. Kreisman, Chief Video Div., Media Bureau, FCC to MTB Bridgeport-NY Licensee LLC, c/o Howard A. Topel, Esq., Leventhal Senter & Lerman, PLLC, 2000 K Street, N.W., Ste 600, Washington, DC 20006-1809 (Nov. 5, 2009)).

<sup>11</sup> *Id.* Attachment F (Forbearance Agreement to First Lien Credit Agreement, pages 1-5.).

<sup>12</sup> *Id.* Attachment G.

<sup>13</sup> 47 U.S.C. § 159(d); 47 C.F.R. § 1.1166. *See also* Implementation of Section 9 of the Communications Act, Assessment and Collection of Regulatory Fees for Fiscal Year 1994, *Report and Order*, 9 FCC Rcd 5333, 5344 (1994), *recon. denied*, 10 FCC Rcd 12759 (1995).

<sup>14</sup> 9 FCC Rcd at 5344 ¶ 29.

<sup>15</sup> 10 FCC Rcd at 12761-62 ¶ 13.

<sup>16</sup> *Id.*

<sup>17</sup> *Id.*

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station loses money, any funds paid to principals and deductions for depreciation or amortization are considered funds available to pay the fees.

MTB B-NY bears the responsibility for the accuracy and completeness of information furnished in proceedings at the Commission.<sup>18</sup> MTB B-NY's *Request* includes unverified information concerning *MTB Group*, which is unrelated to either MTB B-NY or Multicultural LLC. MTB B-NY did not show how the different entities are related or how MTB Group's financial information relates to the *Request*. Without appropriate evidence to draw the connection, we are left to speculate on the existence or nature of a relationship or to infer that the different named entities are the same. That, we will not do. Indeed, in this case, because Arthur Liu and Yvonne Liu's media activities include a number of radio and television stations, television programming businesses, print publications, and sales businesses,<sup>19</sup> it is likely that *MTB Group* is a business entity separate from any of the entities in the *Request*. Thus, we did not consider or apply any portion of MTB Group's financial information to determine whether MTB B-NY's payment of the regulatory fee will cause financial hardship. And, we are unable to discern any relevant information from the unlabeled cash flow at Attachment B.<sup>20</sup> Finally, the compensation information at Attachments C and D is insufficient to establish that MTB B-NY will suffer financial hardship upon the payment of the regulatory fee.

The Forbearance Agreement does not provide support for MTB B-NY's *Request* because it is incomplete.<sup>21</sup> Specifically, the Forbearance Agreement, which ends at page 5, does not include critical signature pages that identify the "Borrower" (that is referred to as "each of [Multicultural television Broadcasting LLC's] Subsidiaries identified on the signature pages") and the "Lenders" ("identified on the signature pages"<sup>22</sup>), relevant exhibits (*e.g.*, the content of the Trust Agreement<sup>23</sup>), and relevant provisions that typically included in such an agreement (*e.g.*, management responsibilities, payment of expenses, and/or working capital).

MTB B-NY has not shown compelling and extraordinary circumstances that outweigh the public interest in recouping the Commission's regulatory costs, and it did not meet its burden to "fully document its financial position and show that it lacks sufficient funds to pay the regulatory fee and to maintain its service to the public."<sup>24</sup> Thus, we deny MTB B-NY's *Request* for a waiver of the fee.

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<sup>18</sup> 47 C.F.R. § 1.65(a) ("Each applicant is responsible for the continuing accuracy and completeness of information furnished in a pending application or in Commission proceedings involving a pending application."); *see also* 47 C.F.R. § 1.17.

<sup>19</sup> See generally <http://www.mrbi.net/index.htm> (web pages describing Multicultural Radio Broadcasting, Inc. and affiliates as owning and operating forty radio stations, media production companies, and marketing business activities). Moreover, Mr. Liu and his wife have 21 separate FCC Registration Numbers (FRNs) pertaining to a number of different named business entities.

<sup>20</sup> MTB B-NY did not identify the entity for the information listed on the document at Attachment B and it did not provide verification of any of the financial information.

<sup>21</sup> See n. 18, *supra*.

<sup>22</sup> Forbearance Agreement at 1.

<sup>23</sup> *Id.* at 4 ¶2(a).

<sup>24</sup> 10 FCC Rcd at 12761-62 ¶ 13.

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Alternatively, MTB B-NY's *Request* seeks a reduction of the FY 2010 regulatory fee on the grounds that the station does not provide a usable signal to a substantial portion of the major metropolitan areas within the New York DMA. MTB B-NY points to the Commission's *Memorandum Opinion and Order* in Implementation of Section 9 of the Communications Act,<sup>25</sup> which endorsed the Managing Director's determination that "stations with [specific] characteristics . . . will be assessed a fee based on the number of television households served, and will be charged the same fee as stations serving markets with the same number of television households."<sup>26</sup> MTB B-NY asserts that WSAH meets those specific characteristics because it is "assigned to the New York DMA[, but is] an independent station . . . not affiliated with a major network[, and with a signal that] does not reach New York City, or the major metropolitan areas within the New York DMA."<sup>27</sup> Furthermore, WSAH "does not place a usable signal over any of th[e major] communities"<sup>28</sup> identified at 47 C.F.R. § 76.51.<sup>29</sup> Thus, because the "WSAH signal reaches only 24% of the population in the New York DMA – 5,153,610 people out of a total of 20,712,000 [and] it serves 1,977,759 households, out of 7,493,530 total households . . . or 26.4%"<sup>30</sup> the station's regulatory fee should be reduced to 26.4% of the amount of the "full fee for UHF stations in the top 10 markets."<sup>31</sup>

We consider a request to reduce a regulatory fee applying the same standard that is used for a request to waive a fee, *i.e.*, "on a case-by-case basis, where good cause is shown and where . . . reduction . . . of the fee would promote the public interest."<sup>32</sup> MTB-B-NY has simply glossed over our regulatory standard, and instead relies exclusively on the factors mentioned in 1995. MTB B-NY's failure to comply fully with our requirements at section 1.1166 is sufficient ground to dismiss the matter. Nonetheless, if we did not dismiss, we would deny the balance of the *Request* for the following reasons: the factors that we used in 1995 to form the characteristics are no longer valid,<sup>33</sup> but even if we apply them, MTB B-NY has not furnished convincing evidence applicable to WSAH either that they are present or, if present, apply in a manner to warrant reduction of the fee. We discuss each point in turn.

In 1995, the Commission identified six characteristics considered by the Managing Director in an exercise of his delegated authority to determine under the law<sup>34</sup> whether to reduce

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<sup>25</sup> Implementation of Section 9 of the Communications Act, *Memorandum Opinion and Order*, 10 FCC Rcd 12759 (1995), *recon. granted*, Implementation of Section 9 of the Communications Act, *Memorandum Opinion and Order*, 12 FCC Rcd 10621 (1997).

<sup>26</sup> *Id.* at ¶ 22.

<sup>27</sup> *Request* at 4.

<sup>28</sup> *Id.*

<sup>29</sup> MTB B-NY has not shown how Section 76.51, which applies to carriage of television broadcast signals, is relevant to its discussion.

<sup>30</sup> *Id.*

<sup>31</sup> *Id.*

<sup>32</sup> 47 C.F.R. § 1.1166.

<sup>33</sup> See *e.g.*, Assessment and Collection of Regulatory Fees for Fiscal Year 2000, Report and Order, 15 FCC Rcd 14478, 14493 ¶ 34 (2000) (The Commission acknowledged "standards for determining, on a case-by-case basis, whether fees for a small station may be reduced below the fees assessed for an assigned DMA and whether fees may be reduced because their payment will create financial hardship," and it noted "the Commission is unaware of the existence of any reliable published source that can identify which television stations are serving small markets at the fringe of larger DMA's.")).

<sup>34</sup> 47 U.S.C. § 159(d); 47 C.F.R. § 1.1166.



a particular station's regulatory fee: (a) the television station operates in a large market, but the station is part of the market "because the residents in the station's service area primarily view the market's principle city's stations;" (b) the station is a UHF station, (c) the station lacks network affiliations, (d) it is outside the principle city's metropolitan area, (e) the station does not provide a Grade B signal to a substantial portion of the market's metropolitan areas, and (f) often the station is not carried by cable systems serving the principal metropolitan areas.<sup>35</sup>

Our view of how a station is included in the "market"<sup>36</sup> in 1995 has changed with the increased reliance on Nielsen Media Research that is the basis for the DMA or designated market area. The DMA, as defined by Nielsen Media Research, is a geographic market designation that defines each television market based on measured viewing patterns. Nonoverlapping DMAs cover the entire continental United States, Hawaii, and parts of Alaska. Counties are assigned to a market based on which home-market stations receive a preponderance of total viewing hours in the county.<sup>37</sup> For example, in 1995, one identified characteristic was the Grade B contour signal, but by 1999, the DMA information was regarded as a better measure of viewing patterns. At that later date, the Commission explained as part of its discussion of the then-current television duopoly rule:

[C]ompared to the current Grade B signal contour standard, DMAs are a better measure of actual television viewing patterns, and thus serve as a good measure of the economic marketplace in which broadcasters, program suppliers and advertisers buy and sell their services and products.

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There are several benefits to defining the geographic dimensions of the local television market by reference to DMAs. Most importantly, unlike a rule relying on predicted field strength contours, DMAs reflect actual television viewing patterns and . . . the fact that a station's audience reach, and hence its "local market," is not necessarily coextensive with the area of its broadcast signal coverage. For example, a station's over-the-air reach can be extended by carriage on cable systems and other multichannel delivery systems, as well as through such means as satellite and translator stations. [fn deleted] In designating DMAs and compiling DMA-based ratings of television programs, Nielsen Media Research . . . collects viewing data [and it] assigns counties to DMAs . . . on the basis of television audience viewership . . . Counties are assigned to a DMA if the majority or, in the absence of a majority, the preponderance, of viewing in the

<sup>35</sup> 10 FCC Rcd at 12763 ¶ 21 (1995).

<sup>36</sup> See *Id.* at ¶ 22 ("In most instances, [information that a station does not serve the principal metropolitan area within the assigned market and serves fewer than a threshold number of television households] can be derived from the Arbitron market data in the Television and Cable Fact Book.").

<sup>37</sup> Second Periodic review of the Commission's Rules and Policies Affecting Conversion to Digital Television, Public Interest Obligations of TV Broadcast Licensees, Children's Television Obligations of Digital Television Broadcasters, Standardized and Enhanced Disclosure Requirements for Television Broadcast Licensee Public Interest Obligations, *Notice of Proposed Rule Making*, 18 FCC Rcd 1279, 1305 ¶ 72 (2003).

county is recorded for the programming of the television stations located in that DMA. [fn deleted]<sup>38</sup>

The particular DMA that includes MTB B-NY reflects the actual television viewing patterns. MTB B-NY has not provided any evidence that it is part of the New York DMA “only because the residents in [WSAH’s] service area primarily view the market’s principle city’s stations.” Indeed, MTB B-NY did not furnish any evidence of what stations are viewed.<sup>39</sup> Hence, MTB B-NY failed to provide evidence for us to conclude that the first characteristic applies to WSAH.

The fact that WSAH is a UHF station, the second characteristic, is significantly less important today than in 1995 to the determination whether the annual regulatory fee may be reduced. Since the digital transition on June 12, 2009, 38% of the stations operating on VHF channels changed channels to UHF.<sup>40</sup> The change was so dramatic that the Commission noted in its Regulatory Fees for Fiscal Year 2010 Report and Order that changes in the number of stations would result in changes in the fee structure to mitigate the impact of the shift on stations still operating on VHF channels.<sup>41</sup> Hence, the major shift to UHF designation means that format is no longer a negative characteristic favoring fee reduction.

Next, MTB B-NY failed to provide information addressing the third standard, its network affiliation. Commonly, network affiliation means a local broadcaster carries some or all of the television program line-up of a television network, but the station is owned by an entity other than the owner of the network.<sup>42</sup> MTB B-NY asserts only that “WSAH is an independent station, and therefore is not affiliated with a major network.” That, however, is not enough information. Stating that a station operates independently from a major network, *e.g.*, ABC, CBS, NBC, or FOX, fails to address squarely whether the station has an agreement to carry programs from a network. Not only did MTB B-NY fail to provide evidence of its agreements (or lack thereof), concerning programming (*e.g.*, an explanation of any agreement with Multicultural Radio Broadcasting, Inc., which controls Chinese Media Group (an affiliate), and other programmers), but it failed to provide basic information of the station’s viewing line-up. We will not use our conjecture to fill the gaps in MTB B-NY’s *Request*, thus we find it failed to provide evidence whether it has network affiliation.

As to the remaining characteristics, we do not agree with MTB B-NY’s conclusion. MTB B-NY’s station, WSAH, is located in Bridgeport, Connecticut, which is part of the nation’s most populous Combined Statistical Area, which, in turn, includes the nation’s most populous Metropolitan Statistical Area.<sup>43</sup> We find that the fact of WSAH’s location and the diagrams at Attachment G, which show signal coverage to counties in the State of New York as well as

<sup>38</sup> Review of the Commission’s Regulations Governing Television Broadcasting, Television Satellite Stations Review of Policy and Rules, *Report and Order*, 14 FCC Rcd 12903, 12926-927 ¶¶ 47-48 (1999).

<sup>39</sup> We will not speculate on the channel line ups of cable and satellite service providers, but we note as a matter of common knowledge that some cable providers provide hundreds of available channels that span local and international level programming.

<sup>40</sup> See Assessment and Collection of Regulatory Fees for Fiscal Year 2010, *Report and Order*, 25 FCC Rcd 9278, 9284 ¶16, 9285-86 ¶¶19-20 (2010).

<sup>41</sup> *Id.* 9285 ¶ 19.

<sup>42</sup> See *e.g.*, 47 C.F.R. § 73.658.

<sup>43</sup> U.S. Census Bureau, 2010 Census.

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Connecticut that are part of the New York DMA<sup>44</sup> rebut MTB B-NY's unsupported assertion that it does not "serve any of the major metropolitan areas within the New York DMA."<sup>45</sup> Furthermore, MTB B-NY did not demonstrate why, in this situation, we should give more weight to signal analysis rather than "DMAs[, which] are a better measure of actual television viewing patterns, and thus serve as a good measure of the economic marketplace in which broadcasters, program suppliers and advertisers buy and sell their services and products."<sup>46</sup> Finally, MTB B-NY provided no information in the *Request* about its status as a high definition broadcaster, viewing information within the broadcast area (over-the-air, by cable, or by satellite services), or channel line ups of the relevant cable and satellite providers,<sup>47</sup> any or all of which may have enlightened us as to its service. MTB B-NY has not met its burden of showing it has any of the last three characteristics. Hence, even if the characteristics were applicable, MTB B-NY has not demonstrated that they are applicable to WSAH.

Thus, MTB B-NY has failed to show good cause for the reduction and how reduction of the fee would promote the public interest,<sup>48</sup> and we deny its *Request*.

You have also requested confidential treatment of the material that you submitted with your request for fee relief. Pursuant to section 0.459(d)(1) of the Commission's rules, 47 C.F.R. §0.459(d)(1), we do not routinely rule on requests for confidential treatment until we receive a request for access to the records. The records are treated confidentially in the meantime. If a request for access to the information submitted in conjunction with your regulatory fees is received, you will be notified and afforded the opportunity to respond at that time.

Payment of \$32,275 for the FY 2010 regulatory fee is now due. The full amount owed should be filed together with a Form FCC 159 (copy enclosed) within 30 days from the date of this letter. If you have any questions concerning this matter, please contact the Revenue & Receivables Operations Group at (202) 418-1995.

Sincerely,



Mark Stephens  
Chief Financial Officer

Enclosure

<sup>44</sup> Relevant to the *Request*, the New York DMA includes the counties of Dutchess, Ulster, Orange, Putnam, Rockland, Westchester, Nassau, Bronx, and Suffolk in New York and Fairfield in Connecticut, which are also covered to in Figure 1 to Attachment G.

<sup>45</sup> *Request* at 4.

<sup>46</sup> *Report and Order*, 14 FCC Rcd at 12926 ¶¶ 47.

<sup>47</sup> E.g., Optimum cable at [http://www.optimum.com/channel\\_lineups.jsp](http://www.optimum.com/channel_lineups.jsp).

<sup>48</sup> 47 C.F.R. § 1.1166.